

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

JODY LEN RUSSELL

PLAINTIFF

v.

Civil No. 2:17-cv-02013

BILL HOLLENBECK;  
SGT. DUMAS; SGT. TAULBEE;  
NURSE CINDY MOORE

DEFENDANTS

**ORDER**

This is a civil rights action filed by the Plaintiff, Jody Len Russell, pursuant to 42 U.S.C. § 1983. Currently before the Court is Defendants' Motion to Dismiss (Doc. 23). The Plaintiff has not responded to the motion.

**I. BACKGROUND**

Plaintiff filed his complaint (Doc. 1) on January 23, 2017. An order granting *in forma pauperis* (IFP) was entered on February 14, 2017. (Doc. 8). In that order, Plaintiff was advised his case could be dismissed if he did not keep the Court apprised of his current address.

On June 6, 2017, the Court was notified of a change of address for the Plaintiff.<sup>1</sup> On June 23, 2017, a notice of electronic filing of a text only order, previously mailed to Plaintiff at his last known address, was returned to the Court marked "Vacant-Unable to Forward." On June 29, an additional filing originally mailed to Plaintiff at his last known address, including the Initial Scheduling Order docketed as Document 19, was returned to the Court marked "Attempted –

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<sup>1</sup> The new address reported by Plaintiff on June 6, 2017 was Community Transitional Services, 7301 West 13<sup>th</sup> St., Pine Bluff, Arkansas 71602.

Unable to Forward.” Additional filings mailed to the Plaintiff, including the Order on Motion to Take Deposition, docketed as Document 21, and Service by Clerk – Return Receipt Received, docketed as Document 22, were returned to the Court, on July 5, 2017 and July 20, 2017 respectively. No new address was available.

The Defendants now move for dismissal of Plaintiff’s complaint because mail has repeatedly been returned as undeliverable and because attempts to locate a current address were unsuccessful. (Doc. 23). The Certificate of Service attached to the Motion to Dismiss shows that the pleading was mailed to the Plaintiff’s last known address. The Plaintiff has not responded to the Defendants’ motion and has not communicated with the Court since June 6, 2017.

## **II. LEGAL STANDARD**

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The local rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating that the district court possesses the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply

with *any* court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (emphasis added).

#### IV. CONCLUSION

In the present case, Plaintiff has failed to prosecute this matter and has failed to keep the Court informed of his current address. Therefore, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that the motion (Doc. 23) should be **GRANTED** and this case should be **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED this 5<sup>th</sup> day of September, 2017.

/s/P. K. Holmes, III  
P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE